IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 896 OF 2000

Pandit Waman More,]
Convict Prisoner No.C/11374,]
Yerawada Central Prison, Pune – 411 006.] .. Appellant.

Versus

The State of Maharashtra,] ..Respondent

Mrs. Latika P. Khemani, Advocate appointed for the appellant/accused.

Mrs. U.V. Kejriwal, A.P.P. for the respondent-State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 30TH SEPTEMBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. The appellant-accused has been convicted for committing the offence punishable under Section 302 and Section 498(A)(b) of the IPC as, after trial, the Additional Sessions Judge, Kalyan, found him guilty of killing his wife deceased

Usha Pandit, on 8th November, 1996, in his house, by pouring kerosene and then setting her on fire.

2. We have heard the Advocate for the appellant and the A.P.P. for the State. We have noted the grounds, as raised in the Memo of Appeal, as well as, the oral submissions made by the parties. We have perused the record and after re-appreciating the evidence, we are of the view that no case is made out by the appellant to interfere with the impugned judgment and order.

3. On 8th November, 1996, at about 4.45 p.m., the appellant-accused poured kerosene on the person of his wife Usha Pandit and set her on fire, which resulted into her death. While she was admitted in the hospital, her dying declaration was recorded (Exhibit-13). The deceased had disclosed that the accused was in a habit of drinking liquor. The accused got annoyed as she refused to give Rs.200/-, as demanded by him. The accused, therefore, lifted the kerosene can and poured kerosene on her person and set her on fire. Before this, the accused had sent all their children out of the house and closed the door and demanded the money. The accused immediately, after setting Usha on fire, opened the door and ran away. Initially, after recording the dying declaration, the FIR was registered under Section 307, 498(a), 323(a) and 504 of IPC. Later on, after her death, the offence was also registered under Section 302 of IPC. After

due investigation, accused was charge sheeted on 9th December, 1996. The accused denied the charges and pleaded not guilty. The defence was raised that the deceased Usha was burnt because of the bursting of the stove. The defence of alibi was also raised.

4. The prosecution has examined 8 witnesses and, one defence witness Kumar Santosh aged 12 years, examined by the accused-appellant. The learned Additional Sessions Judge, based on the above evidence, and material placed on the record, has passed the impugned judgment and order.

5. We have been taken through the testimony of the witnesses, including the dying declaration made by the deceased. We have also gone through the testimony of Kumar Santosh, the defence witness. We are satisfied, based on the evidence, as placed by the prosecution on the record, that the appellant-accused, and no one else, had committed this heinous crime.

6. The dying declaration (Exhibit-13) and the case papers of the hospital (Exhibit-14), Seizure Panchanama (Exhibit-16), Inquest Panchanama (Exhibit-17), Post Mortem Report (Exhibit-21), Spot Panchanama (Exhibit-27) and Chemical Analyzer's Reports (Exhibit-29 & 30), have been rightly relied upon and the learned Additional Sessions Judge has rightly convicted the appellant for the above

crime. PW1 – Dr. Jayshri Pitambar Bhole has supported the prosecution case and proved the basic documents, which shows that in her presence, the deceased made the dying declaration (Exhibit-13) that her husband Pandit poured kerosene on her person and set her on fire. This dying declaration was made in a conscious and sound condition by the deceased. Dr. Bhole, in fact, accordingly made the endorsement at the time of recording the dying declaration (Exhibit-13).

7. We have gone through the dying declaration (Exhibit-13) dated 8th November, 1996, and we have also no doubt that the duly recorded dying declaration itself is sufficient to maintain the conviction and sentence. We have also seen the endorsement made by the Medical Officer that the deceased Usha was conscious and able to give the statement. The deceased Usha herself had also narrated the incident, as referred above. Apart from this, there is a corroborative evidence, which supports the prosecution case.

7. PW 2 – Dr. (Smt.) J.P. Puraswani, who conducted the post mortem on the deceased Usha on 23rd November, 1996, also has supported that the burn injuries were to the extent of 96%, which caused the death. PW3 – Gaubai Prakash Gaikwad, the mother of the deceased Usha, who was residing just near the house of the accused and Usha, also supported that the accused was demanding money for consuming liquor. She has also deposed that on that day, the deceased

Usha returned from work and had brought fish and, thereafter, the deceased and the accused went inside the room. The accused was demanding money and they were quarreling. After 10-15 minutes of the said incident, Usha came out of the house in burning condition. This witness shouted loudly on seeing her. Other boys, who were standing there, put water on the person of Usha to extinguish the fire. This witness Gaubai, along with others, shifted Usha to the Central Hospital, Ulhasnagar. She has also stated that the accused ran away from the house before Usha came outside in burning condition. Even though she was not the eye witness to the actual incident of burning, but this witness can be definitely relied upon and can be said to be the relevant witness to complete the chain of events, as she saw the deceased in burning condition immediately after the incident. She has also stated that the hand of the accused was somewhat burned and that the accused ran away immediately before Usha came out of the house in a burning condition. According to us also, this witness corroborates the case of the prosecution.

8. PW4 – Nitin Hiraman Pagare has deposed that the accused Pandit came running from his house shouting that `Usha is burnt' and ran away. Immediately thereafter, Usha came outside in a burning condition. Therefore he, along with Ramesh and Ganesh, poured water on the person of Usha. The ladies who were gathered, including PW3 - Gaubai the mother of the deceased, when asked, Usha the deceased, told that her husband Pandit, under the influence of

liquor, poured kerosene on her and set on fire. Even though this witness is related to the deceased and his house was about 15 - 20 feet away from the house of Gaubai, according to us, this witness also corroborated the prosecution case. PW5 - PSI Gajraj Shaligram Suryawanshi has supported the prosecution case so far as the investigation and other related aspects are concerned, including the fact that he went to the hospital with the Chairperson of Mahila Aghadi Smt. Das, where Smt. Das, in his presence, had asked some relevant questions to the deceased and the deceased also consciously narrated the said incident. The statement was accordingly recorded as dying declaration, which bears the signature of the Medical Officer and thumb impression of the witness. The crime was accordingly registered. PW6 - API Ashok Sitaram Ingale who has carried the investigation, after recording the dying declaration, further proved the prosecution case, as he immediately visited the place of offence and had drawn the panchanama and seized the kerosene can, half-burnt matchstick and had drawn the Seizure Panchanama (Exhibit-27). He had recorded the statements of the witnesses from time to time. The articles were sent by this witness for the Report of the Chemical Analyzer. This witness has further proved the Chemical Analyzer's Reports (Exhibits-29 & 30). PW7 - Hilda Maria Das, in whose presence the dying declaration was recorded and who was also signatory to the said dying declaration, has also supported the prosecution case, as well as, the dying declaration made by the deceased Usha. PW8 - Police Constable Ashok Bapurao Jamdade was

attached to the Central Police Station who, after receipt of the phone call, went along with PSI Suryawanshi and Smt. Das to the hospital for recording the dying declaration. He also endorsed the recording of the dying declaration. He has also corroborated the narration, which was stated by Smt. Das and PSI Suryawanshi. All these witnesses remained undisturbed.

9. Lastly, what remains is the evidence of the defence witness Kumar Santosh, the son of the accused and the deceased Usha. The testimony of this witness, according to us, nowhere takes away the positive and effective testimony of the other 8 prosecution witnesses, as referred above. This witness must be under a dilemma, while attending the Court or while giving the evidence. He gave positive statement to the effect that the deceased caught fire because of the bursting of the stove. He stated that as his mother caught fire, he got frightened and one person went to call his father. His father reached there within 2 to 3 minutes. His father tried to extinguish the fire. However, as his maternal uncle started beating his father, his father ran away. He further stated that Gaubai threatened and compelled him to say the name of his father, as an accused, otherwise she would kill sister. However, in his cross-examination, he replied that he could not say how his mother caught fire, though he was just besides the door. He further stated that when his father reached there, his mother was holding the tree and she was burning. According to us, the learned Additional Sessions Judge

has rightly relied on the testimony of the above prosecution witnesses. We see there is no reason to interfere with the finding given by the learned Judge.

10. There are no mitigating circumstances to reduce the punishment, as imposed. The accused has committed this heinous crime. Whatever may be the circumstances, as narrated by the other witnesses, the intention of the accused was clear to kill his own wife. He thereafter ran away from the scene. He did not even try to save his wife.

11. There is no merit in the Appeal. For the reasons stated above, the Appeal is dismissed.

12. We quantify the fees to be paid to the Advocate appointed for the appellant at Rs. 750/- for this Appeal.

[V.G. [PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]